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Paper No. 5

RALPH C. FRANCIS  
FRANCIS LAW GROUP  
1808 SANTA CLARA AVE  
ALAMEDA CA 94501

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JUN 19 2003

In re Application of  
Alexander K. Mills et al.  
Application No. 10/008,245  
Filed: November 7, 2001  
Attorney Docket No. : WT-02-004C

**OFFICE OF PETITIONS**  
**ON PETITION**

This is a decision on the petition filed May 15, 2003 under 37 CFR 1.78(a)(3), to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed nonprovisional Application No. 09/684,104 filed October 6, 2000.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in §1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on November 7, 2001 and was copending with the above-noted, prior filed nonprovisional application, at the time of filing, for which priority

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<sup>1</sup>Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS)) to each such prior filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to others related applications may be made when appropriate (see § 1.14).

is claimed.

The above reference to the above-noted, prior-filed nonprovisional application however, was not included in the manner specified in 37 CFR 1.78(a)(2) (i.e., in an ADS or in an amendment to the first sentence following the title of the specification) or filed within the period specified in 37 CFR 1.78(a)(2).

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, an amendment is required.

Additionally, the fees set forth in 37 CFR 1.17(t) for acceptance of an unintentionally delayed claim for priority are \$1300.00, effective January 1, 2003. As \$1240.00 was received May 15, 2003 with the above referenced petition, please submit \$60.00.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23  
2201 S. Clark Place  
Arlington, VA

Telephone inquiries concerning this matter may be directed to Senior Petitions Attorney Patricia Faison-Ball in the Office of Petitions at (703) 305-4497.

  
Beverly Flanagan  
Supervisory Petitions Examiner  
Office of Petitions